



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2004

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2004-0594

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194904.

The Texas Department of Criminal Justice (the "department") received two requests for information related to the department's November 7, 2003 award of correctional service contracts for State Jails, Correctional Centers, and the Lockhart Work Facility.<sup>1</sup> The first request specifically asks for all bid proposals, clarifications, correspondence, best and final offers submitted or exchanged, and the department's written evaluations of bids. The second request asks for best and final offers and bid proposal information submitted by three specified vendors. You claim that the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.117 of the Government Code. Furthermore, as you contend that release of some of the requested information may implicate the proprietary interests of third party vendors, you state, and provide documentation showing, that you notified five third party vendors of the request and of their right to submit arguments to this office as to why the information should not be released.<sup>2</sup> See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act (the "Act") in certain circumstances). We have reviewed the submitted information.

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<sup>1</sup> This ruling concerns the request dated November 14, 2003, by Ms. Chelli Jones, and the request dated November 17, 2003, by Mr. Murray Van Eman.

<sup>2</sup> The department notified CiviGenics, Corrections Corporation of America, Correctional Services Corporation, Management & Training Corporation, and Wackenhut Corrections Corporation of the present request pursuant to section 552.305.

The department seeks to withhold the submitted information in its entirety pursuant to section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990).

In this case, you advise that the contracts at issue have been awarded but have not yet been executed. Thus, you represent that the department's process for receiving, evaluating, and selecting bid offers for these contracts was ongoing at the time the department received the present request for information. You contend that release of detailed offer information, as well as information concerning the department's evaluation process, contained in the submitted documents would allow bidders to undercut the department's position in final negotiations before the procurements are finalized and the contracts at issue are executed. You also contend that release of the information at issue would allow bidders to gain a competitive advantage against other bidders, thereby harming the department's interest in obtaining the best bargain through competition among bidders. Accordingly, you contend that release of the submitted bidding information would harm the department's competitive interests with respect to the contracts at issue. Based on your representations and our review of the submitted information, we find you have demonstrated that release of the submitted information would harm the interests of the department in a particular competitive situation. *See* Open Records Decision No. 592 (1991). We therefore conclude that the department may withhold the submitted information in its entirety pursuant to section 552.104 of the Government Code. Based on this finding, we need not reach the arguments submitted by third parties or the department's remaining claimed exceptions to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a stylized flourish at the end.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 194904

Enc: Submitted documents

c: Ms. Chelli R. Jones  
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